



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 19974536

Date: DEC. 8, 2021

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a social work coordinator, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. We agreed with the Director and dismissed the Petitioner's appeal. The matter is now before us on an untimely motion to reopen and a motion to reconsider. Upon review, we will dismiss the motions.

I. LAW

A motion to reconsider is based on an incorrect application of law or policy, and a motion to reopen is based on documentary evidence of new facts. The requirements of a motion to reconsider are located at 8 C.F.R. § 103.5(a)(3), and the requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

Under 8 C.F.R. § 103.5(a)(1) and 8 C.F.R. § 103.8(b), in general, motions must be filed within 33 days of the adverse decision. In response to the coronavirus (COVID-19) pandemic, however, U.S. Citizenship and Immigration Services (USCIS) has extended the deadline for filing a Form I-290B, Notice of Appeal or Motion. A petitioner may file a Form I-290B within 60 calendar days from the date of the adverse decision, if USCIS issued the decision between March 1, 2020, and January 15, 2022.¹ As relating to a motion to reopen the proceeding, the filing deadline may be excused in the

¹ *USCIS Extends Flexibility for Responding to Agency Requests*, available at <https://www.uscis.gov/newsroom/alerts/uscis-extends-flexibility-for-responding-to-agency-requests> (accessed on December 6, 2021).

discretion of USCIS if a petitioner demonstrates that the delay was reasonable and was beyond their control. 8 C.F.R. § 103.5(a)(1).²

II. ANALYSIS

We will dismiss the motions because they are untimely filed. Our appellate decision was issued on May 12, 2021. The Petitioner filed his motions on August 11, 2021, more than 90 days after we issued the adverse decision. He did not provide documentation to show that the filing delay was reasonable or beyond his control and therefore we will not exercise our discretion to excuse the late filing of his motion to reopen. *See* 8 C.F.R. § 103.5(a)(1). Accordingly, the motions will be dismissed as untimely filed.

III. CONCLUSION

The motions will be dismissed because they are untimely filed. *See* 8 C.F.R. §§ 103.5(a)(1), 103.8(b).

ORDER: The motion to reconsider is dismissed.

FURTHER ORDER: The motion to reopen is dismissed.

² The regulations do not provide a corresponding discretion to excuse an untimely motion to reconsider.